

Remarks

All pending claims (apart from those that have been withdrawn from consideration) stand finally rejected as having been obvious to one of ordinary skill in the art over patent No. 5,745,717, to Vayda et al., in view of newly cited patent No. 5,808,567, to McCloud (the reference to 35 U.S.C. 102(b) in the first paragraph of section 1. of the Action was evidently inadvertent), taken in further view of patent No. 6,545,669, to Kinawi et al., as to Claims 11, 13 and 30.

It is respectfully submitted that these rejections are based upon a misreading and misapplication of the prior art, and are without merit.

According to the Examiner, Vayda discloses a communication system whereby a desired symbol can be selected by detecting movement of the pointing device along a predetermined bearing within the communication region (col. 7, lines 9-34). This is not correct, but rather is a generalization of the disclosure of Vayda and thus inaccurately characterizes the fair teaching of the patent; Vayda actually discloses:

A slight movement of user input device 106 “snaps” highlighter 306 from focus position 304 to a command selector 308 (represented by a name or an icon) that appears in the *radial direction* most closely correlated to the movement of the user input device 106. (emphasis added)

That is, Vayda discloses movement *only in a radial direction*.

Moreover, according to the Examiner Vayda discloses “... [movement along a predetermined bearing] being offset relative to the location of the symbol to be selected (col. 7, lines 35-44) ...”. There is no such disclosure in the cited passage of

Vayda, although it is appreciated that Vayda does disclose, at col 7, lines 32-34:

the radius along which the highlighter 306 moves is the one most closely correlated to the movement of the user input device 106.

Accurately and fairly considered, therefore, the disclosure of Vayda is that movement of the pointing device is in a radial direction from a focus position, and that the symbol selected is the one which correlates most closely to the direction of radial movement.

In sharp contrast, according to Claims 1 and 20 of the present application:

movement is along a bearing which is parallel to a direction of the desired symbol relative to a central region of the communication region; and

symbol selection is independent to the location with the communication region at which movement along the bearing commences.

While perhaps appearing to be relatively minor if considered superficially, the foregoing distinctions do in fact make a significant difference to the usability of the claimed communication system – which system is not taught, is not suggested, and is not achieved by Vayda.

The Examiner deems the newly cited secondary reference, to McCloud, to satisfy the acknowledged deficiency of Vayda; i.e., to teach the predetermined bearing being substantially parallel to a direction of the desired symbol or the like relative to a central region of the communication region. The Examiner has argued that movement from letter A to G is parallel to movement from E to H, and has drawn attention to Figures 10-11 and col 9, lines 40-57.

McCloud provides a communication apparatus which has nine selector pad switches arranged in a 3 x 3 pattern, together with two address switches which are used in conjunction with the selector pad switches to provide thirty-six options (see, for example, col. 2, lines 1-27). The operator then uses the index finger to select a selector pad, and the thumb and middle finger to select one or more of the address switches, if desired. Selection is made by touching the required selector pad (see, for example, col. 6, lines 8-15) with sufficient pressure to make the selector pad switch connector 27 contact the corresponding common connector pattern 47.

Consequently, it is evident that McCloud does not select symbols as a result of movement in a radial direction, as in Vayda, nor does McCloud select symbols as a result of movement along a bearing parallel to a direction of the desired symbol relative to a central region of the communication region, as required by the present invention. Instead, McCloud requires movement in a direction *perpendicular* to the plane of the communication region in order to apply sufficient pressure to make a contact and to operate a switch pad.

Not only does McCloud therefore fail to provide the disclosure needed to cure the deficiency acknowledged by the Examiner to exist in Vayda, but furthermore McCloud resides in a field of art that is nonanalogous to that of Vayda and to the present invention. It would not have been obvious to one skilled in the art to modify the teaching of Vayda with that of McCloud, and the proposed combination must fail as

grounds for rejecting Claims 1 and 20 (or any other claim of the instant application).

And furthermore, even if it were proper to apply the two cited references in combination, still the present invention would not be taught or suggested. Following the Examiner's argument regarding movement from letter A to G being parallel to movement from letter E to H, while the directions may be parallel the effects of such movements are highly significant, and must be considered.

According to the teaching of Vayda, movement from a focus position at letter E, toward letter H, would result in selection of letter H. Vayda does not consider movement corresponding to movement from letter A toward letter G, but Vayda does require movement from a focus position. So if letter A is now considered to be the focus position, then movement toward letter G will select initially letter D and (presumably) subsequently letter G.

In accordance with Vayda, movement from a focus position at letter A will not select letter H, and movement that does not start from a focus position will not select any letter. Therefore, with letter A as the focus position and moving toward letter G, Vayda is devoid of any teaching for selection of the letter H. The Examiner's contrary suggestion is clearly in error.

Applicant once again emphasizes that Vayda requires movement to start from a focus position, whereas the present invention allows symbol selection independent of

the location with the communication region at which movement along the bearing commences.

And in addition to all of the foregoing, there is no teaching in McCloud as to the manner of movement, regarding direction or bearing, between one letter and a subsequent letter. McCloud teaches only that a required selector pad is activated.

Once again, in use of Applicant's communication system movement from letter E (a central region) toward letter H will result in the selection of letter H. Moreover, according to the present invention as defined by Claims 1 and 20, movement from letter A toward letter G (along a bearing parallel to a direction of letter H relative to letter E) will again result in selection of letter H – not letter G.

Clearly, Applicant's communication system and method produce an outcome that is significantly and substantially different from any system or method taught or suggested by Vayda and McCloud, irrespective of whether those references are taken in combination or individually. There is simply no disclosure in Vayda or McCloud, taken alone or together, of either:

movement along a bearing which is parallel to a direction of the desired symbol relative to a central region of the communication region; or

symbol selection independent of the location within the communication region at which movement along the bearing commences.

Obviously, the patent to Kinawi does not cure the fundamental deficiencies of Vayda and McCloud. The present invention is clearly novel and patentable over the prior art.

A Petition for Extension of Time for responding to the outstanding Office Action is enclosed herewith. Also enclosed is Form PTO-2038, authorizing a charge in an amount sufficient to satisfy the fees for filing of the instant application and for the extension of time. Please charge any deficiency in the payment to Deposit Account No. 502982.

Withdrawal of the rejections, and passage of the application to allowance, are in order. Such actions are earnestly solicited.

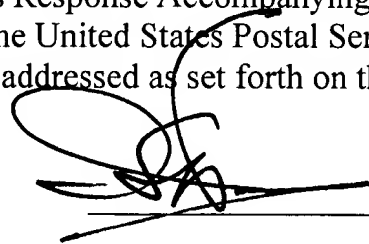
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CERTIFICATE OF MAILING

I, IRA S. DORMAN, hereby certify that this Response Accompanying RCE, and Form PTO-2038, are being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed as set forth on the first page hereof, on April 22, 2010.



cc: Derek C. Jackson, Esq.
(Ref. No. P0434)